***HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

**WRIT PETITION No.23561 of 2006**

**Dated:19.01.2007**

Between:

Managing Committee of Masjid and Darga Hazrath Abdul Nabi Shah, Hanamkonda.

…Petitioner.

and

The Chief Executive Officer, A.P. State Wakf Board, Haz House Building, Nampally, Hyderabad. and another.

…Respondents

***HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

**WRIT PETITION No.23561 of 2006**

**ORDER:**

The petitioner challenges the proceedings, dated 28.10.2006, issued by the Andhra Pradesh State Wakf Board, the 1st respondent, appointing the 2nd respondent as Mutawalli to a Wakf by name Darga Hazrath Abdul Nabi Shah.

The father of the 2nd respondent was functioning as Mutawalli of the said Darga. He was removed from that office on certain allegations. The 1st respondent appointed a managing committee through its proceedings, dated 06.07.2005. On finding that the said committee was not functioning properly, it superseded the same and through proceedings, dated 09.09.2006, appointed another committee with one Mr.Khaja Moinuddin as its president and 15 others as members etc.

The 2nd respondent submitted an application to the 1st respondent for appointing him as a mutawalli in the place of his father. The prescribed procedure was followed and ultimately through order, dated 28.10.2006, the 1st respondent appointed the 2nd respondent as mutawalli of the Darga. The petitioner contends that it was impermissible for the

1st respondent to appoint the 2nd respondent as mutawalli, even while the committee appointed on 09.09.2006 is subsisting.

Sri B.V.S.Sivaram Prasad, learned counsel for the petitioner submits that the 1st respondent appointed the petitioner committee through its proceedings, dated 09.09.2006, for a period of three years and that there is absolutely no justification for him to appoint the 2nd respondent as mutawalli during subsistence of the said term. He further contends that the 2nd respondent ought not to have been appointed as mutawalli for more reasons than one. It is also represented that the impugned order is violative of principles of natural justice.

Sri S.M.Subhani, learned Standing Counsel for Wakf Board and Sri Mirza Safiulla Baig, learned counsel for the 2nd respondent, on the other hand, submit that the purport of the committee on the one hand and the mutawalli on the other, are totally different and it cannot be said that the petitioner has suffered any detriment. According to them, the committee can function only as long as there did not exist any mutawalli and once such a mutawalli is appointed, they have to give away.

It is not in dispute that the 1st respondent appointed the petitioner committee through its proceedings, dated 09.09.2006 for a period of three years. On a representation made by the 2nd respondent, enquiry was caused and objections were invited. Ultimately, through proceedings, dated 28.10.2006, the 2nd respondent was appointed as mutawalli for the same institution. The circumstances under which the petitioner on the one hand and the 2nd respondent on the other were appointed as managing committee and mutawalli, respectively, are totally different. There hardly exists any overlapping. The only area of controversy is as to whether the functioning of the petitioner committee can be terminated and the management be conferred upon the 2nd respondent without any further proceedings.

It may be true that no punitive steps are taken against the petitioner and the necessity to issue notice may not arise, while

appointing the 2nd respondent as mutawalli. All the same, if the appointment of the 2nd respondent is to put an end to the functioning of the petitioner, law requires that it must be put on notice and be given an opportunity to put forward its contention. The nature of objections in such case may be different. Still, as a requirement under law, notice ought to have been issued. At the same time, in the context of the limited exercise, the right that had accrued to the 2nd respondent cannot be taken away.

For the foregoing reasons, the Writ Petition is allowed and it is directed that the entrustment of the management of the wakf to the 2nd respondent shall be undertaken only after the appointment of the petitioner committee is terminated, after issuing notice to it. The right of the 2nd respondent under the impugned order shall remain in tact, unless and until it is set aside by a Court of competent jurisdiction. There shall be no order as to costs.

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**Dt.19.01.2007** **L.NARASIMHA REDDY, J**

GJ